

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE)	
)	
GAMMEL, BERNARD WAYNE)	Case No. 99-02616
)	
)	
Debtor.)	SUMMARY ORDER ON
)	REAFFIRMATION
)	
)	

HONORABLE TERRY L. MYERS, UNITED STATES BANKRUPTCY JUDGE

Jon R. Wilson, Boise, Idaho, for Debtor.

Stephen W. French, Boise, Idaho, for Simplot Employees Credit Union.

Lois K. Murphy, Boise, Idaho, chapter 7 Trustee.

Bernard Wayne Gammel ("Debtor") executed a reaffirmation agreement with creditor Simplot Employees Credit Union ("Creditor"). This agreement was executed on November 19, 1999 and filed with the Court on December 10. A waiver of hearing on reaffirmation agreement was simultaneously executed and filed consistent with LBR 4008.1(b).

This agreement reaffirms a debt of \$38,284.64, together with interest on that amount from July 7, 1999 at an annual percentage rate of 9.9%. The amount of interest through the date of agreement was not specifically set forth. The agreement

also reflected an intent to service the debt through bi-weekly automatic withdrawals (payroll deductions) each in the amount of \$325.25.

The agreement itself did not disclose the nature of any collateral securing the obligation. However, attached to the agreement was a copy of a “Consumer Credit Disclosure Form, Promissory Note and Security Agreement” apparently reflecting the Debtor’s purchase in July, 1999 (barely three months before filing the chapter 7 petition) of a 1999 Ford F250 pickup truck. As best the Court could divine, this truck is the only collateral for the obligation which the Debtor seeks to reaffirm.¹

When the Court reviewed the agreement, it found itself unable to make an informed decision as to whether or not the requirements of § 524 had been met and whether the reaffirmation should be approved. The Court therefore issued an “Order Re: Reaffirmation Agreement” on December 17, 1999 denying the request for reaffirmation approval, but specifically without prejudice to renewal upon amendment.²

On January 10, the Debtor executed another reaffirmation agreement with Creditor, which is now consistent with Form B 240.³ This supplementation of the

¹ It appears that the funds advanced by Creditor were used to pay other loan obligations as well as to purchase the truck, and this may explain why the debt is significantly higher than the value of the collateral, as discussed *infra*.

² This Order also referred to the fact that the underlying agreement did not substantially comply with Form No. B 240 of the Procedural Forms of the Judicial Conference of the United States, or otherwise provide essentially the same information and disclosures as when a Form B 240 is properly completed.

³ The Court deems this an amendment to the earlier agreement, rather than
(continued...)

request provides additional detail concerning the reaffirmation, and assists the Court in evaluating the proposal. Nevertheless, the Court determines that, at this time, the request remains inadequately explained and supported, and approval of the proposed reaffirmation must be denied. Several issues drive this conclusion.

First, the amount of the reaffirmation, of \$38,000.00, is a significant amount of debt. In fact, the amount of debt under this reaffirmation agreement is in excess of the entire amount of unsecured debt listed on Debtor's Schedule F, which is \$36,273.00. While the Court appreciates (and discusses below) the fact that a portion of this obligation is collateralized by a motor vehicle, the large amount of the indebtedness being reaffirmed is a factor.

Second, the Court is concerned with the fact that the reaffirmation agreement, as supplemented, asserts the value of the motor vehicle securing the obligation is \$33,320.50. This means that Debtor is immediately agreeing to waive the benefit of discharge as to a potential deficiency of some \$5,000.00.⁴

Third, there is nothing submitted which explains or justifies the need for such a relatively expensive motor vehicle. While the cost of motor vehicles is ever increasing, adequate transportation can still be obtained for something far less than \$38,000.00. There is nothing about this Debtor's employment or family situation

³(...continued)
an entirely new agreement. This approach is consistent with the terms of the December 17 Order.

⁴ The Debtor's schedules indicate that the value of the vehicle is \$28,000.00, which means the present deficiency is actually \$10,000.00.

reflected by the file which readily explains the necessity for this particular, expensive vehicle.

Fourth, and related to the question concerning the total amount of the debt being reaffirmed, is the fact that servicing the debt will require payments of over \$650.00 per month.⁵ There is no explanation why such a significant amount of the Debtor's limited monthly income⁶ should be dedicated on a ongoing basis to the acquisition of this vehicle.

Finally, the supplementation to the reaffirmation agreement indicates that payments on the debt were not in default when the bankruptcy was filed. This means the Debtor might avail himself of the option under applicable Ninth Circuit precedent to simply maintain payments on the collateralized obligation. That alternative is a factor which must enter into the overall analysis of the matter.

The proponents of the agreement bear the burden of establishing that reaffirmation is appropriate. While significant additional information has been solicited through the Court's requiring amendment and submission of the material required by Form B 240, issues still remain.⁷

⁵ Debtor's Schedule I indicates the monthly withdrawals would amount to \$715.00.

⁶ It appears from the Debtor's submissions that some \$700.00 out of \$900.00 of monthly available income is thus earmarked for servicing this obligation.

⁷ While submission of Form B 240 or its equivalent will in the vast majority of cases provide adequate information for the Court's review, this case illustrates that in some situations additional explanation or detail is required. Merely complying with the disclosure requirements of Form B 240 is not a guarantee of approval.

The Court will therefore deny approval, but will provide the Debtor and Creditor a period of fifteen (15) days from the date of this Order within which to submit in writing any additional factual matters or argument in support of their request for Court approval of this reaffirmation agreement. If no such submissions are made, the Court's denial will become final.

Dated this 21st day of January, 2000.